IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6746 OF 2007

Prahlad Sitaram Deora ....Petitioner
V/s
Jaji Mansion Coop. Hsg. Soc. Ltd. & Ors..... ....Respondents.

Mr.Vinit Naik i/by Ms.Deepa Ahuja, Adv. For the petitioner.
Mr.Virag Tulzapurkar, Sr. Adv. I/by Mr.N.N.Bhadrashete Adv. For the respondent No.1.

CORAM: A.P.DESHPANDE, J.
17/10/07

PC:

The respondent No.1-plaintiff is housing society who instituted a dispute in Cooperative Court against the present petitioners and the respondent Nos. 2 and 3. The Society contended that the respondent Nos. 2 and 3 herein who are opponent Nos. 1 and 2 before the Cooperative Court are the joint members of the disputant-society who are issued five shares of Rs.50/- each bearing distinctive Nos.51 to 55. It is further case of the society that the opponent Nos. 1 and 2 viz. Members of the Society have illegally transferred the disputed premises to the present petitioners who are opponent Nos. 3 and 4 in the dispute. The disputed premises comprise the terrace on the 5th floor and 6th floor and a room on the 6th floor. Declaration is sought in the dispute that the opponent Nos. 1 and 2 who are members of the society do not have any right to the disputed premises and thus the purported transfer of the property in favour of opponent Nos. 3 and 4 does not vest them with any right to the property. Further declaration is sought that opponent Nos. 3 and 4 viz. present petitioners are not eligible to become members of the

disputant-society. One more relief is also sought and the same is to the effect that the agreement executed by opponent Nos. 1 and 2 with the trustees/lessees of the plot is invalid and the same be quashed. The said agreement between the opponent Nos. 1 and 2 and lessees of the plot is prior to the registration of the society.

2. Thus it is crystal clear that on own showing of the disputant-society opponent Nos. 1 and 2 are the members of the society and the premises in question is the subject of management or business of the society. After the dispute came to be filed under section 91 of the Maharashtra Cooperative Societies Act (the "Act") the present petitioners who are opponent Nos. 3 and 4 before the Cooperative Court moved an application under order 7 rule 10 of the Code of Civil Procedure thereby making a prayer for return of the plaint for presentation to proper Court. The basis for making of the said prayer is that according to the petitioners the dispute is not maintainable and the Cooperative Court has no jurisdiction to deal with the same under section 91. The trial Court rejected the application by holding that the Cooperative Court has jurisdiction to decide the dispute as the dispute is between the society and its members viz. Opponent Nos. 1 and 2. The order passed by the Cooperative Court was challenged by filing an appeal before the Cooperative Appellate Court. The Cooperative Appellate Court has also dismissed the appeal and aggrieved thereby this writ petition has been filed. It is a settled position in law that jurisdiction of the Court has to be determined on the basis of pleadings in the plaint. As stated herein above it is categorically pleaded in the plaint that the opponent Nos. 1 and 2 are members of the society and opponent Nos. 3 and 4 are claiming through them. Thus the dispute is covered by section 91(1)(b) of the Maharashtra Cooperative Societies Act, 1960. The dispute is touching the management and/or business of the Society. The learned

counsel for the petitioner has submitted that in another proceeding before the Deputy Registrar the Society in its reply has stated that the present petitioners/opponent Nos. 3 and 4 before the Cooperative Court and M/s.Lakdawala are not members of the society. The said statement made in reply before another authority in different proceedings will not determine the jurisdiction of the Cooperative Court for trying the present dispute. At the most, the society can be confronted with the said statement and the contradictory stand taken by the society could be brought on record of the proceedings in dispute. Thus there is no merit in this contention. The other submission is that the agreement entered into by opponent Nos. 1 & 2 with the lessee of the suit property had taken place on 1.11.97 whereas the society was registered on 1.1.98, hence the dispute challenging the said transaction is not maintainable under section 91 of the Act. I do not propose to opine in regard to competency of the Cooperative Court to decide the said controversy. However it is made clear that it shall be open for the petitioners to agitate the said point which can be decided on merit after trial by the Cooperative Court. Just because the trial of one of the prayers could be said to be doubtful by the Cooperative Court at this stage, it is no reason for return of the plaint when most of the reliefs claimed in the dispute are triable by the Cooperative Court. The prayer for return of the plaint under order 7 rule 10 of the Code of Civil Procedure is misconceived and it has been so correctly held by the Courts below. Perused the impugned orders. Same does not call for any interference in exercise of writ jurisdiction as no patent illegality is shown to have been committed. Hence writ petition is summarily dismissed.